IN THE HIGH COURT OF JUDICATURE AT PATNA
C.R. No.1659 of 2006
RAJENDRA PODDAR & ANR
Versus
SHAKUNTALA DEVI

13/ 05.05.2010 Let I.A. No. 8546 of 2009 be considered at the time of final hearing of the case.

2. I.A. No. 2663 of 2010 has been filed on 18.03.2010 on behalf of the petitioners for converting this civil revision into a second appeal.

3. The law is well-settled in this regard that a revision under the proviso to sub-section (8) of Section 14 of the Bihar Buildings (Lease, Rent & Eviction) Control Act, 1982 can be filed only against an order of eviction passed by the trial court and no such revision can be filed against an order of eviction passed by the lower appellate court. It is also settled law that once a recourse to section 96 of the Code of Civil Procedure has been taken and any one is aggrieved by the judgment and decree of the lower appellate court, the only recourse left for him is to file a second appeal under section 100 of the Code of Civil Procedure .

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4. In the said circumstances, I.A. No.2663 of 2010 is allowed and this civil revision is permitted to be converted into a second appeal. Let necessary corrections in that regard must be made by the petitioners in the petition within one week, failing which, this civil revision shall dismissed without further reference to a Bench.

5. Since this civil revision had already been admitted

on 18.02.2008, this second appeal will also be deemed to be admitted. However, the following substantial questions of law as per the petitioners (now appellants) arise for consideration in the instant second appeal :-

(i) Whether the findings of fact with regard to the claim of the plaintiffs were arrived at on the basis of pleadings and evidence of the parties ?

(ii) Whether by not supporting the plaint by coming to depose as P.Ws., the plaintiffs' claim can be legally allowed ?.

6. Since both the opposite parties (now respondents) have already appeared through their learned counsel, who accepts appeal notices on their behalf, no notice is required to be sent to them. As regards the lower court records, the same have already been received as is apparent from the office note dated 10.03.2008.

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7. Office is directed to make a fresh stamp report including limitation within two weeks.

8. Put up this case under the heading `To be mentioned' on 19.05.2010 for fixing an early date of hearing in the instant second appeal, which arises out of an eviction suit of 1987 filed by the plaintiffs-respondents on the ground of personal necessity.

MPS/ **(S. N. Hussain, J.)**